IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE WALTER PRICE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 33697

FILED

FEB 12 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus.

The district court convicted appellant in district court case numbers C127461 and C126027, pursuant to a jury verdict, of seven counts of sexual assault with the use of a deadly weapon with substantial bodily harm, four counts of sexual assault with the use of a deadly weapon, three counts of sexual assault with substantial bodily harm, one count of first-degree kidnapping with the use of a deadly weapon, one count of second-degree kidnapping, one count of battery with the use of a deadly weapon, two counts of battery with intent to commit sexual assault, one count of robbery and one count of robbery with the use of a deadly weapon in connection with assaults of three different women. The district court sentenced appellant to multiple concurrent and consecutive prison terms, including multiple life sentences, both with and without the possibility of parole. This court dismissed appellant's direct appeal, but

vacated the deadly weapon enhancement as to three of the sexual assault charges.[1] The remittitur issued on January 29, 1998.

On August 17, 1998, appellant filed a proper person post-conviction petition for a writ of habeas corpus designating both district court case numbers in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On November 3, 1998, the district court denied appellant's petition. This appeal followed.

In his petition, appellant first contended that he received ineffective assistance of trial counsel. Specifically, appellant alleged (1) that his attorney failed to sufficiently investigate appellant's mental status at the time of commission of the instant offenses, (2) that his attorney improperly withdrew appellant's plea of not guilty by reason of insanity, and (3) that his attorney failed to determine appellant's competency at time of trial.

Our review of the record on appeal reveals that the district court did not err in denying appellant relief on these claims. Appellant's claims are belied and repelled by the record on appeal.[2] It appears from

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[1]Price v. State, Docket No. 28175 (Order Dismissing Appeal and Vacating Judgment in Part, December 30, 1997).

[2]See Hargrove v. State, 100 Nev. 498, 503, 686 P. 2d 222, 225 (1984) (providing that "[a] defendant seeking post-conviction relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the record.").

the record on appeal that defense counsel thoroughly investigated appellant's mental status at all relevant times: that he sought and received several psychiatric evaluations and pursued a not guilty by reason of insanity defense until the psychiatric reports indicated the defense was not colorable. The psychiatric evaluation made part of the record on appeal concluded that appellant did not meet "the criteria for the insanity defense" and that appellant was competent to stand trial. Appellant provided no documentation supporting a conclusion that he was either criminally insane at the time of commission of the instant crimes or that he was mentally incompetent at the time of trial.[3] Appellant did not allege, nor does the record suggest, that defense counsel withdrew appellant's not guilty by reason of insanity plea in contravention of appellant's wishes.[4] Finally, appellant testified at trial on his own behalf and responded coherently, appropriately and consistently to questions posed on both direct and cross-examinations. Thus, we conclude that appellant failed to establish that he was improperly denied of a plea of not guilty by reason of insanity by his trial counsel or that he was incompetent to stand trial.

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[3]Id. at 502, 686 P.2d at 225 (holding that a petitioner must set forth claims that, if true, would entitle him to relief).

[4]See generally, Johnson v. State, 117 Nev. ___, ___, 17 P.3d 1008, 1014-15 (2001) (holding that a defendant can make certain fundamental decisions regarding the objectives of representation, such as whether to present a defense of not guilty by reason insanity).

Appellant next contended that he received ineffective assistance of appellate counsel. Specifically, appellant alleged that his appellate counsel failed to raise the following claims on direct appeal: (1) that appellant received ineffective assistance of counsel for the reasons set forth above, and (2) that the district court erred in denying appellant a competency hearing.[5] First, claims of ineffective assistance of counsel may not be raised on direct appeal, "unless there has already been an evidentiary hearing."[6] Further, we conclude that appellant cannot demonstrate that he was prejudiced by appellate counsel's failure to raise these claims on direct appeal.[7] As discussed above, these claims did not have a reasonable probability of success on appeal.[8]

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that

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[5]Appellant also raised this second claim as a constitutional violation independent of his ineffective assistance of appellate counsel claim. To the extent that this issue could have been raised on direct appeal, it is waived. Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994) overruled in part on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999); see also NRS 34.810(1). We nevertheless address appellant's claim in connection with his contention that appellate counsel should have raised it on direct appeal.

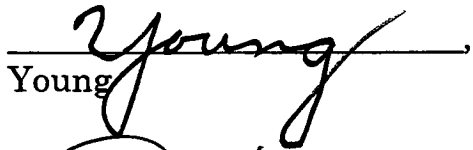
[6]Feazell v. State, 111 Nev. 1446, 1449, 906 P.2d 727, 729 (1995).

[7]See Strickland v. Washington, 466 U.S. 668 (1984); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

[8]Kirksey, 112 Nev. at 998, 923 P.2d at 1114.

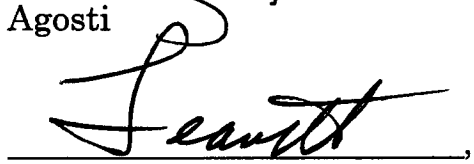
briefing and oral argument are unwarranted.[9] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[10]



_____, J.
Young

_____, J.
Agosti



_____, J.
Leavitt

cc: Hon. Ronald D. Parraguirre, District Judge
Attorney General/Carson City
Clark County District Attorney
George Walter Price
Clark County Clerk

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[9]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

[10]We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.